

TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
BKA.0005US

In Re Application Of: **Oleg B. Rashkovskiy**

SEP 20 2007

Application No. **09/690,159** Filing Date

October 17, 2000

Examiner

Ngoc K. Vu

Customer No.

21906

Group Art Unit

2623

Confirmation No.

2744

Invention: **Providing Content Interruptions**

COMMISSIONER FOR PATENTS:

Transmitted herewith is the Appeal Brief in this application, with respect to the Notice of Appeal filed on:
August 1, 2007

The fee for filing this Appeal Brief is: \$170.00; \$330.00 paid on 05/18/2007.

- ☒ A check in the amount of the fee is enclosed.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment to Deposit Account No. **20-1504**. I have enclosed a duplicate copy of this sheet.
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.


Signature

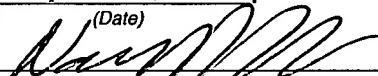
Dated: **September 18, 2007**

Timothy N. Trop, Reg. No. 28,994
TROP, PRUNER & HU, P.C.
1616 S. Voss Road, Suite 750
Houston, TX 77057
713/468-8880 [Phone]
713/468-8883 [Fax]

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on

September 18, 2007

(Date)



Signature of Person Mailing Correspondence

Nancy Meshkoff

Typed or Printed Name of Person Mailing Correspondence

CC:



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor:

Oleg B. Rashkovskiy

Serial No.: 09/690,159

Filed: October 17, 2000

For: Providing Content Interruptions

§
§
§
§
§
§
§

Art Unit: 2623

Examiner: Ngoc K. Vu

Atty Docket: BKA.0005

Mail Stop **Appeal Brief-Patents**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

09/20/2007 FMETEKI1 00000087 201504 09690159

01 FC:1402 330.00 DA 170.00 OP

Date of Deposit: September 18, 2007

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Nancy Meshkoff

TABLE OF CONTENTS

REAL PARTY IN INTEREST	3
RELATED APPEALS AND INTERFERENCES.....	4
STATUS OF CLAIMS	5
STATUS OF AMENDMENTS	6
SUMMARY OF CLAIMED SUBJECT MATTER	7
GROUND OF REJECTION TO BE REVIEWED ON APPEAL	9
ARGUMENT	10
CLAIMS APPENDIX.....	12
EVIDENCE APPENDIX.....	16
RELATED PROCEEDINGS APPENDIX	17

REAL PARTY IN INTEREST

The real party in interest is the assignee BlackArrow, Inc.

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

Claims 1-43 (Canceled).

Claims 44-51 (Rejected).

Claims 52-53 (Canceled).

Claims 54-56 (Rejected).

Claim 57 (Canceled).

Claims 58-74 (Rejected).

Claims 44-51, 54-56, and 58-74 are rejected and are the subject of this Appeal Brief.

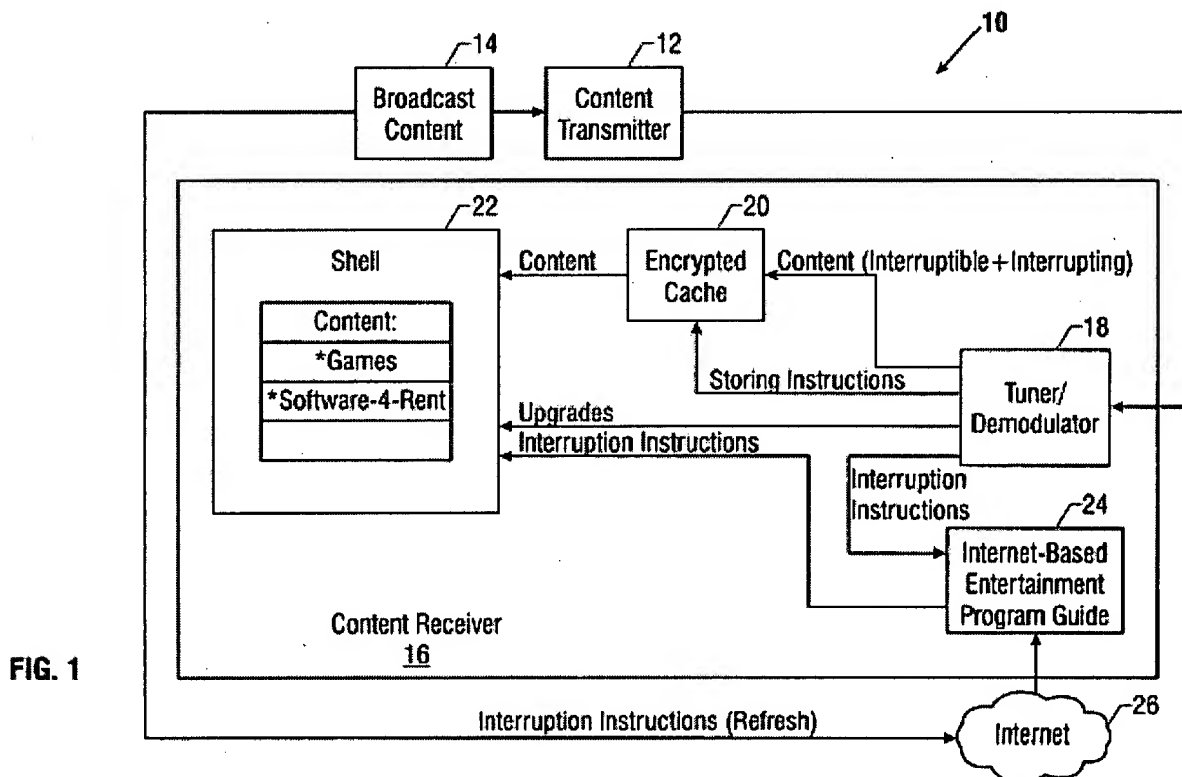
STATUS OF AMENDMENTS

All amendments have been entered.

SUMMARY OF CLAIMED SUBJECT MATTER

In the following discussion, the independent claims are read on one of many possible embodiments without limiting the claims:

44. A method comprising:
- receiving content and at least two advertisements on a content receiver (Fig. 1, 16; p. 5, lines 6-8);
 - storing the content and advertisements in a cache (Fig. 1, 20) coupled to said content receiver (p. 5, lines 10-12);
 - selecting a stored advertisement based on a content characteristic that is specified by an advertisement provider (p. 14, lines 3-21);
 - displaying content retrieved from said cache in one mode of display (page 8, lines 16-22); and
 - in response to detecting a change from the one mode of display to another mode of display, displaying one or more selected advertisements for as long as the other mode of display continues, said change from said one mode of display to said other mode of display in response to an action taken by a user of said content receiver (p. 8, line 23-P. 11, line 12).



54. A computer-readable medium storing instructions that are executed to enable a processor-based system to:

receive content and more than one advertisement on a content receiver, said content receiver including said processor (Fig. 1, 16; p. 5, lines 6-8);

store the content and advertisements in a cache (Fig. 1, 20) coupled to said content receiver (p. 5, lines 10-12);

select a stored advertisement based on a content characteristic specified by an advertisement provider (p. 14, lines 3-21);

display content retrieved from said cache in one mode of display (page 8, lines 16-22); and

in response to detecting a switch from the one mode of display to another mode of display, display one or more selected advertisements for as long as the other mode of display continues, said switch from said one mode of display to the other mode of display initiated by a user's use of the content (p. 8, line 23-p. 11, line 12).

64. A system comprising:

a receiver (Fig. 1, 16) to receive content and at least two advertisements (p. 5, lines 6-8);

a cache (Fig. 1, 20), coupled to said receiver, to store said content and advertisements (p.5, lines 10-12); and

an interface (Fig. 1, 22), in said receiver, to select, based on a content characteristic that is specified by an advertisement provider, a stored advertisement, display content retrieved from said cache in one mode of display, and in response to detecting a user-initiated stop of the one mode of display of content, display one or more selected advertisements for as long as the one mode of display is stopped (p. 8, line 23-p. 11, line 12).

At this point, no issue has been raised that would suggest that the words in the claims have any meaning other than their ordinary meanings. Nothing in this section should be taken as an indication that any claim term has a meaning other than its ordinary meaning.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- A. **Whether claims 44-51, 54-56, and 58-74 are unpatentable under 35 U.S.C. § 103(a) over Armstrong (US 7,017,173) in view of Zigmond (US 6,698,020).**

ARGUMENT

A. Are claims 44-51, 54-56, and 58-74 unpatentable under 35 U.S.C. § 103(a) over Armstrong (US 7,017,173) in view of Zigmond (US 6,698,020)?

The issue that remains in this case is whether the cited Zigmond reference teaches a so-called advertising repository that also stores the programming feed or content. Certainly, this seems improbable from Figure 5 which is the figure related to the material cited in the office action at column 15, lines 24-34.

There, the figure shows an ad insertion device 80 that receives an ad delivery, as indicated by the left to right arrow at the upper left corner of the figure. The ad delivery is received by an ad filter 84 that passes the advertisements to an advertisement repository 86. From the advertisement repository, the advertisements go to a video switch 90. The video switch 90 also receives the programming delivery, namely, the content or a programming feed and selects one or the other to output to the display 58. Thus, the difficult question raised by the rejection is how does the programming get into the advertisement repository 86 if the office action is correct? This would seem to go against everything shown in the figure.

The contrary position is supported, according to the office action, by the language in column 15. However, column 15 is explicit that the advertising repository 86 "contains a cache of delivered advertisements." See column 15, lines 24 and 25. Moreover, the advertisement repository is a means "for storing a plurality of advertisements." See column 15, lines 26 and 27.

In the material relied on by the Examiner, the applicant is apparently trying to explain what type of cache is used as the advertisement repository for storing advertisements. It is respectfully submitted that, in view of the above, it is not reasonable to interpret the language that the type of storage is one that is capable of storing video programming indicates that somehow, contrary to everything else in the application, the content is stored in the so-called advertisement repository. To the contrary, the language clearly indicates that the advertisement repository stores advertisements, but it is a computer readable medium "capable of storing digitally encoded video programming." This does not mean that it stores the programming feed, which would make no sense and is inconsistent with everything else in the patent. Instead, all it means is that the storage medium for the advertisement should be the kind of storage medium

used to store video. Presumably, that is because advertisements that are inserted into video programming are generally video themselves.

Further, it is explained in column 15, at lines 31-33, that the advertisement repository may also constitute magnetic video tape or other recording medium for storing an analog version of the video programming feed. Again, it makes no sense to interpret this literally since there is no way for the programming feed to get into the advertisement repository. Moreover, it would be odd to call it an advertisement repository if it actually stores everything, including things other than advertisements.


Most disconcerting is the fact that, if the advertisement and the programming feed is already in the advertisement repository, why is there also a programming delivery arrow extending left to right to the video switch in Figure 5? The video switch apparently selects between the advertisement repository 86 and the programming delivery for output to the display 58. See column 16, lines 20-21.

The language "capable of storing the programming feed" does not mean that the advertising repository actually stores the programming feed. While the cache may be the type of media capable of storing any video, it would make no sense that the advertisement repository already has the advertisement and the programming feed and then for some reason the video switch selects between the material coming from the advertising repository (that already includes the programming feed) and an independent source of the programming feed (as indicated by the arrow to the left of the video switch in Figure 5). It is respectfully submitted that there is simply no possible way that the reference teaches such a system or that such a system would make any sense.

Applicant respectfully requests that each of the final rejections be reversed and that the claims subject to this Appeal be allowed to issue.

Respectfully submitted,

Date: September 18, 2007



Timothy N. Trop, Reg. No. 28,994
TROP, PRUNER & HU, P.C.
1616 S. Voss Road, Suite 750
Houston, TX 77057
713/468-8880 [Phone]
713/468-8883 [Fax]

CLAIMS APPENDIX

The claims on appeal are:

44. A method comprising:
receiving content and at least two advertisements on a content receiver;
storing the content and advertisements in a cache coupled to said content receiver;
selecting a stored advertisement based on a content characteristic that is specified
by an advertisement provider;
displaying content retrieved from said cache in one mode of display; and
in response to detecting a change from the one mode of display to another mode
of display, displaying one or more selected advertisements for as long as the other mode of
display continues, said change from said one mode of display to said other mode of display in
response to an action taken by a user of said content receiver.
45. The method of claim 44 wherein selecting an advertisement includes selecting
based on a content suitability characteristic specified by the advertisement provider.
46. The method of claim 45 including comparing the content suitability characteristic
specified by an advertisement provider to a rating assigned to a given content, said rating to
quantify the suitability of at least one content aspect.
47. The method of claim 44 wherein selecting an advertisement includes selecting an
advertisement based on a content type specified by the advertisement provider.
48. The method of claim 47 including accessing an indicia that identifies the content
type.
49. The method of claim 48 including searching keywords that identify the content
type.

50. The method of claim 44 including storing a variety of content types and allowing any one of the content types to be selected for play at any time.

51. The method of claim 44 including receiving interruption instructions at a program guide and forwarding the interruption instructions to an interface, said interface monitoring for criteria that determines when content is able to be interrupted.

54. A computer-readable medium storing instructions that are executed to enable a processor-based system to:

receive content and more than one advertisement on a content receiver, said content receiver including said processor;

store the content and advertisements in a cache coupled to said content receiver;

select a stored advertisement based on a content characteristic specified by an advertisement provider;

display content retrieved from said cache in one mode of display; and

in response to detecting a switch from the one mode of display to another mode of display, display one or more selected advertisements for as long as the other mode of display continues, said switch from said one mode of display to the other mode of display initiated by a user's use of the content.

55. The medium of claim 54 further comprising instructions, that are executed enable the system to select based on a content suitability characteristic specified by the advertisement provider.

56. The medium of claim 55 further comprising instructions, that are executed enable the system to compare the content suitability characteristic specified by an advertisement provider to a rating assigned to a given content, said rating to quantify the suitability of at least one content aspect.

58. The medium of claim 54 further comprising instructions, that are executed enable the system to access an indicia that identifies the content type.

59. The medium of claim 58 further comprising instructions, that are executed enable the system to search for keywords that identify the content type.

60. The medium of claim 54 further comprising instructions, that are executed enable the system to store a variety of content types and allow any one of the content types to be selected for play at any time.

61. The medium of claim 54 further comprising instructions, that are executed enable the system to monitor for criteria that determines when content is able to be interrupted.

62. The medium of claim 61 further comprising instructions, that are executed enable the system to receive interruption instructions over a back channel.

63. The medium of claim 54 further comprising instructions, that are executed enable the system to distribute a particular content item to a variety of locations on said cache.

64. A system comprising:
a receiver to receive content and at least two advertisements;
a cache, coupled to said receiver, to store said content and advertisements; and
an interface, in said receiver, to select, based on a content characteristic that is specified by an advertisement provider, a stored advertisement, display content retrieved from said cache in one mode of display, and in response to detecting a user-initiated stop of the one mode of display of content, display one or more selected advertisements for as long as the one mode of display is stopped.

65. The system of claim 64 wherein said system is a television receiver.

66. The system of claim 64 coupled to a back channel to receive instructions about when to insert the selected advertisement.

67. The system of claim 64 including a device that parses content from instructions for inserting a selected advertisement.

68. The system of claim 67 wherein said device also parses instructions for how to store the content and advertisements.

69. The system of claim 64 including a content guide software that receives interruption instructions for interrupting content and replacing content with a selected advertisement.

70. The system of claim 64 wherein said interface selects an advertisement based on a content suitability characteristic that is specified by an advertisement provider.

71. The system of claim 70 wherein said interface selects an advertisement based on a content type that is specified by the advertisement provider.

72. The method of claim 44 wherein detecting a change in one mode of display includes detecting a pause in the use of the content.

73. The method of claim 72 including resuming the use of the content.

74. The method of claim 44 wherein detecting a change from the one mode of display to another mode of display includes detecting a change from a mode of active play in a game to a mode in which the playing of the game is paused.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.